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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

THE PEOPLE, Plaintiff and Respondent, v. RICKY ALLEN GONZALES, Defendant and Appellant.	F040169 (Super. Ct. No. 23532) **MODIFICATION OF OPINION ON DENIAL OF REHEARING [NO CHANGE IN JUDGMENT]**

It is ordered that the opinion filed herein on December 30, 2003, be modified as follows:

On page 3, the first sentence of the first paragraph under the heading **Causation Instruction** should be modified to read as follows:

On the premise that the battery was only a "small part" of his conduct, Gonzales argues that reversal of the battery conviction is necessary since the causation instruction prejudiced him.

Although nothing requires us to explain our ruling on the petition for rehearing, we nonetheless choose to do so. We modify the opinion as noted above to correct an editing oversight. In that respect, the petition for rehearing was appropriate. In other respects, however, the petition for rehearing was inappropriate.

In the petition for rehearing, counsel requests that we add almost three pages of additional facts to the opinion. We decline to do so. The California Constitution requires that appellate court opinions "be in writing with reasons stated." (Cal. Const., art. VI, § 14.) The Supreme Court construes the constitutional requirement to require that an appellate court opinion set forth "the 'grounds' or 'principles' upon which the justices concur in the judgment." (*Lewis v. Superior Court* (1999) 19 Cal.4th 1232, 1262.) "An appellate court is not required to address all of the parties' respective arguments, discuss every case or fact relied upon by the parties, distinguish an opinion just because a party claims it is apposite, or express every ground for rejecting every contention advanced by every party. [Citations.]" (*People v. Garcia* (2002) 97 Cal.App.4th 847, 853.)

In the petition for rehearing, counsel presents a one-and-one-half-page summary of facts, suggests that the opinion analyzes only "isolated bits of evidence," and argues a lack of substantial evidence. "[A]n opinion is not a brief in reply to counsel's arguments. [Citation.] In order to state the reasons, grounds, or principles upon which a decision is based, the court need not discuss every case or fact raised by counsel in support of the parties' positions." (*Lewis v. Superior Court, supra,* 19 Cal.4th at p. 1263.) "The California Supreme Court has not been reluctant to give short shrift to deserving issues. [Citations.]" (*People v. Garcia, supra,* 97 Cal.App.4th at p. 853.)

"A meticulously crafted but unpublished legal essay, replete with extended analyses of law and expositions of reasoning and which distinguishes authorities and responds to every nuance of argument in the parties briefs, requires the devotion of a share of the Court of Appeal's limited human and material resources far out of proportion to the utility of the effort. (See 9 Witkin, Cal. Procedure (4th ed. 1997) Appeal, § 682, pp. 715-716.)" (*Id*. at p. 851.) "The briefest [opinion] formats are appropriate in cases … where the factual contentions are subject to the routine application of the substantial evidence rule.…" (*Id*. at p. 853.)

In the petition for rehearing, counsel writes, "Appellant was not seeking to use the detective's conduct as a defense." To the contrary, the record shows defense counsel argued to the jury, "Why in the world would an officer … run up and in his words dive onto the fence?," and characterized the officer's conduct as "playing John Wayne here. We dive for the ball that is going out of bounds. We dive for the ball to make the touchdown. He hits the fence. That was his willful choice." The record shows defense counsel asked the jury, "Deputy District Attorney said you think he did these things to himself? The answer to that question is absolutely yes. He did them to himself when he decided that he was going to dive onto the fence." The record shows defense counsel argued to the jury, "When an officer decides to do that he is acting not in a logical, reasonable fashion in the real world and he takes his consequences with it." The record shows defense counsel summarized to the jury his theory of the detective's conduct as a defense: "The officer chose to dive onto the barb [sic] wire fence. He didn't have to do that. There were another [*sic*] ways to deal with it. I submit to you that there was not a personal infliction of … physical force or injury to the peace officer."

The appellant's opening brief likewise casts the detective's conduct as a defense: "Logically, at least some [of the officer's injuries] were caused by the officer's actions before appellant allegedly punched him." The respondent's brief retorts: "In fact, appellant even intimates that [the officer] was responsible for some of his own injuries. [Citation.] In addition to being offensive, appellant's argument fails." The ensuing one-and-one-half pages of the respondent's brief discredit that intimation.

In the petition for rehearing, counsel writes that the opinion "mischaracterizes" the flight instruction arguments. The opinion states Gonzales "argues that flight is an element of each of the offenses here, but the statutes defining those offenses belie his argument. (Pen. Code, §§ 69, 148.10, subd. (a), 243, subd. (c)(2).)" In the petition for rehearing, counsel writes that the briefing before the issuance of the opinion "did *not* argue that flight was an element of each offense *in the abstract* but rather argued that the

flight was an element *under the facts of the case*." (Italics in original.) The salient point is not that the briefing before the issuance of the opinion was "somewhat confusing and disorganized" (*People v. Deere* (1991) 53 Cal.3d 705, 713, fn. 3) and only partially in agreement with that single sentence from the petition for rehearing but that the constitutional requirement "is satisfied as long as the opinion sets forth those reasons upon which the decision is based; that requirement does not compel the court to discuss all its reasons for rejecting the various arguments of counsel" (*Lewis v. Superior Court, supra,* 19 Cal.4th at p. 1264).

"'[T]he individually prepared legal essay, the product of countless hours of precious judicial time, is an impossible procedure for handling today's monstrous caseload, and in the majority of appeals it serves no useful social purpose.'" (*People v. Garcia, supra,* 97 Cal.App.4th at p. 852, quoting Witkin, Manual on Appellate Court Opinions (1977) § 131, pp. 255-256.) "'There is no reason and no time for legal essays to be written on all appealed cases, whether the essays are long or short. The full-scale opinion, stating the nature of the action, the issues, the facts, the law, and the reasoning that leads to the decision, should be reserved for cases in which that opinion will add something of significance to the law – new principles or rules, or new applications of old principles or rules.'" (*People v. Garcia, supra,* 97 Cal.App.4th at pp. 852-853, quoting Witkin, Manual on Appellate Court Opinions (1977) § 131, pp. 255-256.) This is not such a case.

We commend to counsel's attention Witkin's synopsis of the requirements of a petition for rehearing: "Despite the general lack of specified grounds for rehearing in the statutes and rules, case law has established that the petitioner must do more than reargue his [or her] case. Instead, he [or she] should make a strong showing of a substantial error of law or fact, or serious doubt as to the correctness of a statement of law." (9 Witkin, Cal. Procedure, *supra*, § 850, pp. 885-886.) Here, the petition for rehearing by and large runs afoul of those requirements.

The modification does not change the judgment.

The petition for rehearing is denied.

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Gomes, J.

WE CONCUR:

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Ardaiz, P.J.

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Harris, J.